

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 58

SENATE BILL 1415

AN ACT

AMENDING SECTIONS 8-106 AND 8-535, ARIZONA REVISED STATUTES; RELATING TO
PARENTAL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-106, Arizona Revised Statutes, is amended to
3 read:
4 8-106. Consent to adoption; waiver; consent to the release of
5 information; notification to potential fathers
6 A. The court shall not grant an adoption of a child unless consent to
7 adopt has been obtained and filed with the court from the following:
8 1. The child's birth or adoptive mother, if living.
9 2. The child's father if any of the following is true:
10 (a) The father was married to the child's mother at the time of
11 conception or at any time between conception and the child's birth unless his
12 paternity is excluded or another man's paternity is established pursuant to
13 title 25, chapter 6, article 1.
14 (b) The father has adopted the child.
15 (c) The father's paternity is established under title 25, chapter 6,
16 article 1 or section 36-334.
17 3. A child who is twelve years of age or older and who gives consent
18 in open court.
19 4. Any guardian of the person of the child who is appointed by a court
20 and WHO IS given authority by it to consent to the child's adoption.
21 5. An agency or the division that has been given consent to place the
22 child for adoption by the parent or parents whose consent would be necessary
23 under paragraph 1 or 2 of this subsection, or that has been given authority
24 in other legal proceedings to place the child for adoption.
25 6. The guardian of any adult parent for whom a guardian is currently
26 appointed.
27 B. It is not necessary for a person to obtain consent to adopt from
28 the following:
29 1. An adult parent for whom a guardian is currently appointed.
30 2. A parent whose parental rights have been terminated by court order.
31 3. A parent who has previously consented to an agency's or the
32 division's placement of the child for adoption.
33 4. A person whose consent is not required under subsection A of this
34 section.
35 C. The minority of the child or parent does not affect the child's or
36 parent's competency to give consent in the instances set forth in this
37 section.
38 D. A consent to adopt is irrevocable unless obtained by fraud, duress
39 or undue influence.
40 E. An agency, the division or an attorney participating or assisting
41 in a direct placement adoption pursuant to section 8-130 shall obtain from a
42 birth parent, at the time consent for adoption is obtained, a notarized
43 statement granting permission or withholding permission for the child being
44 adopted, when the child reaches eighteen years of age, to obtain identifying
45 and nonidentifying information about the child and the consenting birth

1 parent. The agency, division or attorney shall inform the birth parent at
2 the time of obtaining the notarized statement that the decision to grant
3 permission or withhold permission may be changed at any time by filing a
4 notarized statement with the court. The most recent notarized statement
5 shall operate as consent for the court to grant or withhold identifying and
6 nonidentifying information.

7 F. A notarized affidavit signed by the mother listing all potential
8 fathers shall be filed with the court. The affidavit shall attest that all
9 of the information contained in the affidavit is complete and accurate.

10 G. Notice shall be served on each potential father as provided for the
11 service of process in civil actions. The notice shall be substantially in
12 the form prescribed in subsection I of this section and shall inform the
13 potential father of all of the following:

14 1. That adoption is planned.

15 2. The potential father's right to consent or withhold consent to the
16 adoption.

17 3. The potential father's responsibility to initiate paternity
18 proceedings under title 25, chapter 6, article 1, and to serve the mother
19 within thirty days of completion of service.

20 4. The potential father's responsibility to proceed to judgment in the
21 paternity action.

22 5. The potential father's right to seek custody.

23 6. The potential father's responsibility to begin to provide financial
24 support for the child if paternity is established.

25 7. That the potential father's failure to file a paternity action
26 pursuant to title 25, chapter 6, article 1, and to serve the mother and
27 proceed to judgment in the paternity action as prescribed by this section,
28 bars the potential father from bringing or maintaining any action to assert
29 any interest in the child.

30 H. A mother may apply to the court for permission to omit her address
31 from the affidavit and from the notice to potential fathers. The court shall
32 grant this request if the mother shows to the court's satisfaction this is
33 necessary to protect her safety.

34 I. The notice required pursuant to subsection G of this section shall
35 be in substantially the following form:

36 Notice:

37 Notice is given to _____ that you have been identified
38 by _____, the natural mother, residing at
39 _____, as a potential father of a child to be
40 born or, born on _____, in _____.

41 You are informed of the following:

42 1. _____, the natural mother, plans to place the
43 child for adoption.

2. Under sections 8-106 and 8-107, Arizona Revised Statutes, you have the right to consent or withhold consent to the adoption.

3. Your written consent to the adoption is irrevocable once you give it.

4. If you withhold consent to the adoption, you must initiate paternity proceedings under title 25, chapter 6, article 1, Arizona Revised Statutes, and serve the mother within thirty days after completion of service of this notice.

5. You have the obligation to proceed to judgment in the paternity action.

6. You have the right to seek custody.

7. If you are established as the child's father, you must begin to provide financial support for the child.

8. If you do not file a paternity action under title 25, chapter 6, article 1, Arizona Revised Statutes, and do not serve the mother within thirty days after completion of the service of this notice and pursue the action to judgment, you cannot bring or maintain any action to assert any interest in the child.

9. The Indian child welfare act may supersede the Arizona Revised Statutes regarding adoption and paternity.

10. You may wish to consult with an attorney to assist you in responding to this notice.

J. A POTENTIAL FATHER WHO FAILS TO FILE A PATERNITY ACTION AND WHO DOES NOT COMPLY WITH ALL APPLICABLE SERVICE REQUIREMENTS WITHIN THIRTY DAYS AFTER COMPLETION OF SERVICE AS PRESCRIBED IN SUBSECTION G OF THIS SECTION WAIVES HIS RIGHT TO BE NOTIFIED OF ANY JUDICIAL HEARING REGARDING THE CHILD'S ADOPTION OR THE TERMINATION OF PARENTAL RIGHTS AND HIS CONSENT TO THE ADOPTION OR TERMINATION IS NOT REQUIRED.

Sec. 2. Section 8-535, Arizona Revised Statutes, is amended to read: 8-535. Notice of initial hearing; waiver; guardian ad litem

A. After the petition has been filed, the clerk of the superior court shall set a time and place for the initial hearing. Notice of the initial hearing and a copy of the petition shall be given to the parents of the child, the guardian of the person of the child, the person having legal custody of the child, any individual standing in loco parentis to the child, the tribe of any Indian child as defined by the federal Indian child welfare act of 1978 (25 United States Code section 1903) and the guardian ad litem of any party as provided for service of process in civil actions. In addition to the service of process requirements in civil actions, any parent, any Indian custodian and the tribe of an Indian child shall be notified of the initial hearing by registered mail, return receipt requested, as required by the federal Indian child welfare act of 1978 (25 United States Code section 1912). The notice required by this subsection shall include the following statement:

1 You have a right to appear as a party in this proceeding. The
2 failure of a parent to appear at the initial hearing, the
3 pretrial conference, the status conference or the termination
4 adjudication hearing may result in an adjudication terminating
5 the parent-child relationship of that parent.

6 B. The initial hearing shall take place no sooner than ten days after
7 the completion of service of notice.

8 C. Notice and appearance may be waived by a parent before the court or
9 in writing and attested to by two or more credible witnesses who are eighteen
10 or more years of age subscribing their names thereto in the presence of the
11 person executing the waiver or shall be duly acknowledged before an officer
12 authorized to take acknowledgements by the person signing the waiver of
13 notice and appearance. The face of the waiver shall contain language
14 explaining the meaning and consequences of the waiver and the termination of
15 parental rights. The parent who has executed such a waiver shall not be
16 required to appear.

17 D. If a parent does not appear at the initial hearing, the court,
18 after determining that the parent has been served with proper legal notice,
19 may find that the parent has waived the parent's legal rights and is deemed
20 to have admitted the allegations of the petition by the failure to appear.
21 The court may terminate the parent-child relationship as to a parent who does
22 not appear based on the record and evidence presented as provided in rules
23 prescribed by the supreme court.

24 E. At the initial hearing, the court shall:

25 1. Schedule a pretrial conference or status conference.

26 2. Schedule the termination adjudication hearing.

27 3. Instruct the parent that the failure to appear at the pretrial
28 conference, status conference or termination adjudication hearing may result
29 in an adjudication terminating the parent-child relationship as to a parent
30 who does not appear.

31 F. On the motion of any party or on its own motion, the court shall
32 appoint a guardian ad litem if it determines that there are reasonable
33 grounds to believe that a party to the proceeding is mentally incompetent or
34 is otherwise in need of a guardian ad litem.

35 G. The county attorney, on the request of the court or a governmental
36 agency or on the county attorney's own motion, may intervene in any
37 proceedings under this article to represent the interest of the child.

38 H. A POTENTIAL FATHER WHO FAILS TO FILE A PATERNITY ACTION WITHIN
39 THIRTY DAYS AFTER COMPLETION OF SERVICE OF THE NOTICE PRESCRIBED IN SECTION
40 8-106, SUBSECTION G WAIVES HIS RIGHT TO BE NOTIFIED REGARDING THE TERMINATION
41 OF PARENTAL RIGHTS AND HIS CONSENT TO THE TERMINATION OF PARENTAL RIGHTS IS
42 NOT REQUIRED.

APPROVED BY THE GOVERNOR APRIL 6, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2006.

